

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.15756 of 2014 (O&M)

Date of decision: 20.09.2018

Gian Singh

...Petitioner(s)

Versus

Punjab School Education Board and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Kapil Kakkar, Advocate for the petitioner(s).

None for respondent Nos.1 & 2.

Ms. Harsimrat Rai, DAG, Punjab
for respondent Nos.3 & 4.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks quashing of the impugned order dated 04.08.2011 (Annexure P-7) passed by respondent No.1 whereby the prayer for correction of date of his birth from 02.03.1962 to 02.11.1964 on the basis of birth certificate (Annexure P-4) has been rejected.

Learned counsel for the petitioner refers to **Iswar Lal Mohanlal Thakkar** Vs. **Paschim Gujarat Vij Company Ltd., and another**, 2014 (2) SCT 765 to contend that the respondents have committed a grave error in not accepting the birth certificate (Annexure P-4) as a conclusive proof of age as per Section 35 of the Evidence Act. The petitioner had applied for correction of date of his birth from

02.03.1962 to 02.11.1964 in response to the public notice published on 12.02.2011 by respondent No.1 wherein it has been mentioned that all students who had passed the board examination may apply for corrections, if any, in the date of birth, name of mother/father. However, the request of the petitioner was declined by stating that if the correction is done then his middle and matriculation examination will lose their validity. Learned counsel cites **Harpal Singh and another Vs. State of Himachal Pradesh**, 1981 AIR SC 361.

There is no representation on behalf of respondent Nos.1 & 2.

Learned State counsel submits that the request made by the petitioner for correction in date of birth cannot be accepted as it will directly infringe the mandatory and express provisions of Statutory Regulations namely 'The Punjab School Education Board (Matriculation Examination Regulations) 1988 which have been framed under Section 24 of the Punjab School Education Board Act. The petitioner appeared as a private candidate for the examination held in September 1978 as a re-appear candidate. Under the Regulations, a person is eligible to appear as a private candidate who has attained the age of 14 years as on 31st October preceding the year of examination. In the present case, the petitioner wishes to change of date of his birth from 02.03.1962 to 02.11.1964 which is not permissible under the Regulations and therefore, assumingly his request is accepted, then he will lose the validity of his certificates as his age will be lower than the prescribed age under the

Regulations. In case assumingly date of his birth is changed to 02.11.1964, his 14 years complete on 02.11.1978 and cut off date as prescribed in the Regulations will be 31.10.1977 whereas he appeared in September 1978 and therefore, in any case, the petitioner would be lower than 14 years of age as in the month of September, 1978 when he appeared in the examination. Therefore, she states that his request for change of date of birth has been rightly rejected. She further states that likewise the request of ten more candidates was rejected on the same ground.

Heard.

In **Burn Standard Co. Ltd. & others Vs. Shri Dinabandhu Majumdar & Anr.**, 1995 SCC (4) 172, Hon'ble the Supreme Court observed as under:-

“9. No doubt, there may be special law or rules which permit a person appointed in the service of the Government or its instrumentality to seek correction of his date of birth which might have been accepted by the Government or its instrumentality, as the case may be, as correct at the time of his appointment. But, the special law or rules governing the service of an employee if forbids correction of such date of birth of employee after its acceptance by the Government or its instrumentality, its subsequent correction at the instance of such employee, becomes impermissible. However, in the absence of such special law or rules it may be open to the employee concerned to seek correction from the Government or its instrumentality, of the date of birth declared by him and accepted by the Government. Even where such correction is sought, the Government or its instrumentality, as the case may be, would be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction. If that be the legal position, can it be said that it is open to a High Court in exercise of its extra- ordinary writ jurisdiction to

entertain a writ application of an employee of the Government or its instrumentality, as the case may be, for correction of his date of birth entered in his 'Service and Leave Record' at the time of his appointment and direct the Government or its instrumentality concerned to correct such date of his birth in his 'Service and Leave Record' and continue him in service beyond the date of his normal retirement, is the question. It is true that the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution can even enter upon disputed questions of fact, if the case in which the extraordinary jurisdiction is invoked warrants adoption of such inevitable course and decide upon the same for giving relief to the concerned party. But, the question is that if an employee of the Government or its instrumentality, who is at the fag end of his service and due for retirement from his service shortly, according to his date of birth found in his 'Service and Leave Record' files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for the High Court to entertain such application to enquire into disputed facts pertaining to his date of birth for correcting it and extend his period of service?

10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of

birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end-of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following: When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he

is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases Interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be

acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief.”

In the instant case, the Regulations, The Punjab School Education Board (Matriculation Examination Regulations) 1988 go to the root of the matter and the prayer is direct conflict with the Regulations. Moreover, learned counsel for the petitioner is unable to explain as to how the correction of date of birth which is a question of fact can be agitated by way of filing a writ petition under Articles 226/227 of the Constitution of India. The case law cited by the learned counsel for the petitioner is distinguishable on facts and will not apply in the present case.

In view of the above, the present petition is dismissed.

20.09.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No